



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 03690-00

15 September 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: ITC [REDACTED] USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 19May00 w/attachments
(2) PERS-311 memo dtd 24Jul00
(3) PERS-85 memo dtd 16Aug00
(4) Memo for the record dtd 12Sep00
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that her naval record be corrected by removing the enlisted performance evaluation report for 16 to 29 September 1997. A copy of this report is at Tab A. She further requested to be advanced to senior chief petty officer (pay grade E-8) retroactive to 1 September 1998.

2. The Board, consisting of Messrs. Kastner and Zsalman and Ms. LeBlanc, reviewed Petitioner's allegations of error and injustice on 14 September 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command (NPC) office having cognizance over Navy performance evaluation matters, has commented to the effect that Petitioner's request to remove the contested performance evaluation report should be approved. They further recommend that the beginning date of her uncontested report for 30 September 1997 to 12 January 1998 be changed from 30 September 1997 to 16 September 1997, to maintain continuity.

c. Enclosure (3), the advisory opinion from PERS-85, the NPC office having cognizance over Navy officer promotions and enlisted advancements, states that Petitioner's records indicate she was selected for advancement to E-8 (senior chief) from the November 1996, cycle 153 advancement cycle. Therefore, based on the recommendation from PERS-311 to remove the contested evaluation report, they recommend Petitioner's record be corrected to indicate she was advanced to senior chief on 16 June 1998.

d. Enclosure (4) documents that PERS-852, the NPC office responsible for Navy enlisted advancements, advised that Petitioner would have received a time in rate date of 1 July 1997, had she been advanced to senior chief from the November 1996, cycle 153 advancement cycle.

e. On 16 June 1998, Petitioner's rating was "RM." Her rating was subsequently converted to "IT."

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2), (3) and (4), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following enlisted performance evaluation report and related material:

Date of Report	Reporting Senior	Period From	of Report To
29Oct97	 USN	16Sep97	29Sep97

b. That Petitioner's performance evaluation report for 30 September 1997 to 12 January 1998 be modified by changing the beginning date from 30 September 1997 to 16 September 1997.

c. That NO memorandum be entered in Petitioner's record in place of the removed report, as it is not necessary for continuity.

d. That Petitioner's naval record be corrected further to show she was advanced to RMCS, pay grade E-8, effective 16 June 1998, with a time in rate date of 1 July 1997.

e. That Petitioner's naval record be corrected further to show that her rating conversion was from RMCS to ITCS, rather than RMC to ITC.

f. That any material or entries relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

g. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JOHN B. ROBERTS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


Executive Director



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
24 July 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subject: [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) Commander, Naval Surface Group, MIDPAC LTR 5812 Ser 0061/0483 of 24 OCT 97

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of her fitness report for the period 16 September 1997 to 29 September 1997 and restore her advancement to E-8 on the limiting date of advancement from cycle-153.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and her right to submit a statement. The member indicated she did desire to submit a statement. The member's statement and reporting senior's endorsement are properly reflected in her digitized record.

b. The report in question is a Special/Regular report prepared to document the member receiving Commanding Officers Non-Judicial Punishment. The member alleges the report was used unjustly as a punitive measure from NJP.

c. Evaluating a member's performance and making recommendations concerning promotions and assignments are the responsibilities of the reporting senior. These duties are accomplished in the performance evaluation. In viewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. We must see if there is any rational basis to support the reporting senior's decision, and whether the reporting senior actions were the result of improper motive. However, we must start from the position that the reporting senior exercised his/her discretion properly. Therefore, for us to recommend relief, the petitioner has to demonstrate that the reporting senior did not properly exercise his/her authority. The petitioner must show that the reporting senior acted for illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion, she must provide evidence to support the claim. I believe Chief Petty Officer [REDACTED] done so.

d. Based on reference (b), we believe the performance evaluation for the period 16 September 1997 to 29 September 1997 should be removed from [REDACTED] record.

e. The member proves the report to be unjust or in error.

3. We recommend removal of the performance evaluation in question and change the evaluation for the period 30 September 1997 to 12 January 1998 to read 16 September 1997 to 12 January 1998 to maintain continuity.

[REDACTED]

Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1430
Ser 85/889
16 Aug 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL
RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00XCB)

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF
[REDACTED] BOIN, USN, [REDACTED]

Ref: (a) BUPERSINST 1430.16D

Encl: (1) BCNR file #03690-00

1. Based on policy and guidelines established in referece (a),
enclosure (1) is returned recommending approval.

2. A review of G [REDACTED]'s records indicates she was selected
for advancement to Senior Chief Petty Officer from the
November 1996, cycle 153, advancement cycle. Based on PERS-311
memorandum dated 24 July 2000, recommending removal of a fitness
report for the period of 16 September 1997 to 29 September 1997,
Chief [REDACTED]'s records should be corrected to indicate she was
advanced to ITCS on 16 June 1998.

[REDACTED]
By direction

12 September 2000

MEMO FOR THE RECORD

Re: Case of [REDACTED] (M) [REDACTED] USN, docket no. [REDACTED]

[REDACTED] says [REDACTED] would have received a time in rate date of 1 July 1997, had she been advanced to ITCS from the November 1996, cycle 153, advancement cycle.

[REDACTED]
J. [REDACTED] ROBIN
Head, Performance Section